

Served: February 7, 2000



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 3rd day of February, 2000

Ninety-day Notice of

**EXECUTIVE AIRLINES, INC., D/B/A  
AMERICAN EAGLE**

under 49 U.S.C. 41731 *et seq.* to terminate  
service at Ponce, Puerto Rico

**Docket OST-1999-6592 - 2**

**ORDER PROHIBITING SUSPENSION OF SERVICE  
AND REQUESTING PROPOSALS**

**Summary**

By this order, the Department is prohibiting Executive Airlines, Inc., d/b/a American Eagle, from suspending service at Ponce, Puerto Rico, until suitable replacement service has been inaugurated and requesting proposals from carriers interested in providing replacement essential air service at the community.

**Essential Air Service Definition**

By Order 85-3-76, March 27, 1985, the Department defined essential air service for Ponce as requiring at least two daily nonstop round trips to San Juan with sufficient capacity to enplane at least 25 passengers a day or, based on an assumed 60% load factor, at least 42 seats arriving and 42 seats departing from the community per day.

**Background**

On December 2, 1999, American Eagle filed a 90-day notice of its intention to suspend its subsidy-free service at Ponce, Puerto Rico, effective March 2, 2000. Recent traffic

levels at Ponce show a steady decline in enplanements as shown in the Table below:

Annual Enplanements at Ponce, Puerto Rico

YE 12/31/96	20,300
YE 12/31/97	15,746
YE 12/31/98	12,038
YE 9/30/99	10,109

American Eagle has reduced its service during that time. In these situations it is difficult to determine cause and effect, i.e., did declining traffic levels cause the reduction in air service or did the service reductions cause the decrease in passengers? American Eagle served Ponce with 12 nonstop round trips a week in 1997 and 10 nonstop round trips a week most recently. Ponce is a major community of 200,000 residents, 80 miles from San Juan. The close proximity of a major hub such as San Juan would normally favor frequent service with small aircraft. However, American Eagle's smallest aircraft in the Caribbean is the 46-seat ATR 42.

#### **Service Proposals**

In accordance with the foregoing discussion, we request service proposals from carriers interested in offering service at Ponce. Because of Ponce's history of generating very significant passenger levels, we expect that required subsidy levels, if any, will be short term in nature. All service should be nonstop, and we are aware of no hub suitable for Ponce other than San Juan. The provisions of the Essential Air Service program require that communities such as Ponce be served with aircraft having at least two pilots and twin engines. However, given the extremely tight budget constraints under which the Essential Air Service program is operating, we would not dismiss any proposals out of hand without first consulting with the community officials.

#### **Procedures for Filing Replacement Proposals**

For interested carriers unfamiliar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f) and discusses in detail the process of requesting proposals, conducting reviews of applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, a copy of Part 204 of our regulations (14 CFR 204), and schedules setting forth our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. (Section 204.4 describes the fitness information required of all applicants for authority to provide essential air service.) Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred.

However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces and nondiscrimination.<sup>1</sup> Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

### **Community Comments**

If we receive competing proposals, the community is welcome to submit comments on the proposals at any time. Early in the proceeding, comments on the proposals' strengths and weaknesses would be particularly helpful, and the civic parties may also express a preference for a particular carrier, if they choose. In any event, after conducting rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.<sup>2</sup>

Lastly, since American Eagle is the only carrier providing scheduled air service at Ponce its proposed termination of service would eliminate all air service to the community. Thus, in accordance with 49 U.S.C. 41734, we must prohibit American Eagle from suspending service at Ponce for an initial 30-day period beyond the end of the 90-day notice period, through April 1, 2000, or until suitable replacement service has been inaugurated at the community, whichever comes first.

This order is issued under authority delegated in 49 CFR 1.56a(f).

### **ACCORDINGLY;**

1. The Department requests that carriers interested in providing essential air service at Ponce, submit their proposals, with subsidy if necessary, within 21 days after the date of service of this order. Proposals should include all the data required by section 204.4 of the Department's Regulations (14 CFR 204.4). An original and five copies of the proposal

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<sup>1</sup> The regulations applicable to each of these three areas are (1) 49 CFR Part 20, New Restrictions of Lobbying, implementing title 31, United States Code, section 1352, entitled, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants), implementing the Drug-Free Workplace Act of 1988; and (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

<sup>2</sup> In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be provided reliably without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service as proposed.

should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, with the title "Proposal to Provide Essential Air Service at Docket OST 1999-6592;

2. The Department prohibits American Eagle from suspending service at Ponce, Puerto Rico, at the end of its 90-day notice period and requires it to maintain ten weekly nonstop round trips between Ponce and San Juan, Puerto Rico, through April 1, 2000, or until a carrier capable of providing reliable essential air service actually begins service, whichever comes first;<sup>3</sup>

3. The Department directs American Eagle to retain all books, records, and other source and summary documents to support subsidy claims for payment and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

4. This docket will remain open until further order of the Department; and

5. The Department will serve a copy of this order on the community of and Ponce, Puerto Rico, the Hawaii Department of Transportation and Public Facilities, American Eagle and the carriers and other parties listed in Appendix B.

By:

**A. BRADLEY MIMS**  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

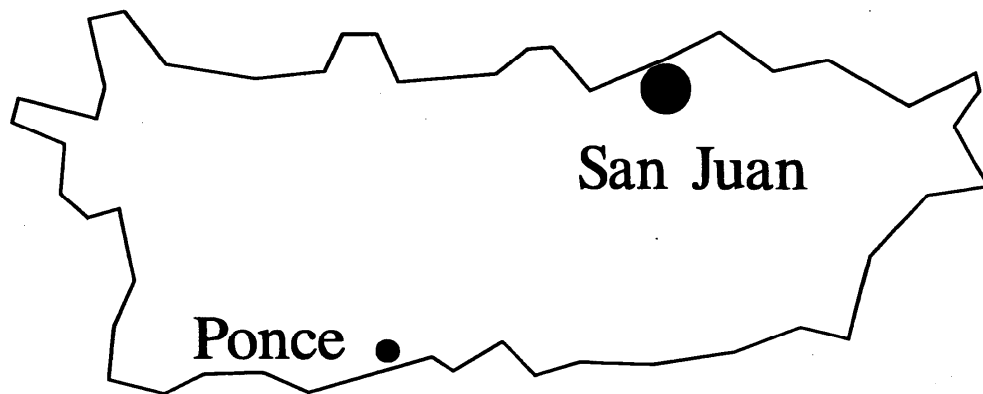
*An electronic version of this document is available on the World Wide Web at  
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*The electronic version may not include all of the appendices*

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<sup>3</sup> In accordance with 49 U.S.C. 41734(c), we will extend Pacific Wings' service obligation for successive 30-day periods as necessary until replacement service actually begins.

## PUERTO RICO



**PSE-SJU Air Miles - 47**

**SERVICE LIST**  
**Docket OST 1999-6592**

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